

***State v. Hershberger*, 462 N.W.2d 393 (Minn. 1990)**

Objective: To understand that under the Minnesota Constitution the Minnesota Courts can offer protections that are greater than the rights protected by the U.S. Constitution.

[Case Summary](#)

[Case Study](#)

[Discussion Questions](#)

[Moot Court Activity](#)

[Introduction](#)

[Moot Court Procedure](#)

[Student Instructions](#)

[Drawings from case](#)

[Teacher Notes for Discussion Questions](#)

[Learning More](#)

[*Ascher v. Commissioner of Public Safety*](#)

[*Friedman v. Commissioner of Public Safety*](#)

[*Elli Lake v. Wal-Mart Stores*](#)

[The Slaughterhouse Case: Application of the Minnesota Constitution](#)

[Procedure](#)

[Case Study](#)

[Guide for Analysis](#)

[Resources](#)

CASE SUMMARY

Amish residents were given traffic citations for failing to display slow-moving vehicle symbols on their buggies. The case was before the Minnesota Supreme Court on remand from the United States Supreme Court to be considered in light of the U.S. Supreme Court's holding in *Employment Div., Dep't of Human Resources of Oregon v. Smith*, 110 S. Ct. 1595 (1990). In *Smith*, the U.S. Supreme Court held that a law of general application, one that is not intended to regulate religious belief or conduct, is not invalid if the law incidentally infringes on religious practices (e.g., state can prohibit use of peyote despite the fact that the drug is used during some Native American religious ceremonies).

The Amish alleged that their religious beliefs prohibited them from displaying the symbols required by the statute that they were cited for violating. The Minnesota Supreme Court recognized "that individual liberties under the state constitution may deserve greater protection than those under the broadly worded federal constitution." It concluded that regardless of the effect of the *Smith* decision, the state had failed to show that there was not a less-restrictive alternative to displaying the slow-moving vehicle symbols. Such a showing is required under the Minnesota Constitution in light of the conclusion that the defendant's reason for disobeying the statute was a sincere religious belief. The charges against the Amish for disobeying the statute were dismissed.

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CASE STUDY

***State v. Hershberger*, 462 N.W.2d 393 (Minn. 1990)**

Amish families from Ohio began to arrive in Fillmore County, Minnesota in 1973-74. As a religious community, they adopted a simple lifestyle, traveling by horse and buggy. At first, there were few problems with the Minnesota law requiring an orange and red triangular slow-moving vehicle sign to be displayed on buggies and wagons. Younger Amish, conscious of their position as newcomers and anxious to fit into their new community, tended to use the required sign. Some Amish preferred to display a black triangle outlined in white as a compromise. Others refused to use any sign. They believed the bright colors of the sign and the symbol itself would put their faith in “worldly symbols” rather than in God. Instead, they outlined their buggies with silver reflective tape. If stopped and tagged, Amish drivers usually pled not guilty. Routinely, they were found guilty and then paid the fines.

Concerns were raised by people living in the area. Occasional accidents involving slow-moving vehicles showed the need for such signs to protect public safety. In 1986, Minnesota law was changed to allow the black triangle with a white outline. Many Amish agreed to this compromise. But in 1987, when the law was changed again to require the orange triangle to always be carried in the wagon and used at night or in poor weather, the conflict grew.

Amish who refused to carry the sign began to be ticketed, fined, and sentenced to community service or jail time. Initial fines were \$20 - \$22, and first time jail sentences were seven days. Jail sentences would not have to be served if there were no additional tags within six months. Soon, repeat offenders began to appear back in court within the six-month period, refused to pay fines, and were required to serve time in jail.

In December 1988, Mr. Hershberger and thirteen others appeared before a judge for violation of the sign law. They asked the court to dismiss the traffic citations explaining their refusal to display the sign was based on their sincere religious beliefs and that the sign law punished them for their beliefs through fines and jail time. They wanted to practice their religion without interference from government as guaranteed in the First Amendment. They believed the law should allow an alternative that would not violate their religion - the use of silver reflective tape.

The judge refused to dismiss the citations, pointing out that the Amish community was divided on whether or not their religion prohibits display of the sign. Because of this, it did not appear to the judge that the religious belief was sincere. The judge also felt that highway safety was a more important consideration. However, the judge did ask the Minnesota Court of Appeals to consider the constitutional questions, which were then forwarded to the Minnesota Supreme Court. The Minnesota Supreme Court found that the law violated the Free Exercise Clause of the U.S. Constitution. As a result, the trial court’s decision to refuse to dismiss the charges was set aside and all charges against the Amish were dismissed.

The State appealed to the U.S. Supreme Court. The U.S. Supreme Court agreed to consider the case. At the same time, the court was considering a free exercise of religion case arising out of religious use of peyote. In this case, *Employment Division, Department of Human Resources of Oregon v. Smith* (1990), the Supreme Court significantly changed First Amendment free exercise analysis. The court held that a law of general application, which does not intend to regulate religious belief or conduct, is not invalid because the law incidentally infringes on religious practices.

The U.S. Supreme Court remanded (sent back) the *Hershberger* case to the Minnesota Supreme Court for reconsideration, applying the new standards decided under *Smith*. In addition

to the *Smith* decision interpreting the U.S. Supreme Court, the Minnesota Court also had to consider the protections offered by Article 1, Section 16 of the Minnesota Constitution.

Issue

Does Minnesota law requiring the slow-moving vehicle sign violate the rights of the Amish to free exercise of religion guaranteed in the Minnesota Constitution and the U.S. Constitution?

Points of Law

Under Article I, Section 16 of the Minnesota Constitution, individuals are provided the following protections.

Freedom of conscience; no preference to be given to any religious establishment or mode of worship. *The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.*

The First Amendment to the U.S. Constitution reads, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .” The amendment’s guarantee of freedom of religion contains two parts: (1) the establishment clause, and (2) the free exercise clause.

Under the establishment clause, the state may not treat one religion more favorably than others so as to make it appear that the government is supporting that religion as the state-approved religion. The clause has also been interpreted to forbid government from aiding religion in general over non-religion.

Under the free exercise clause, the state may not restrict the free exercise of religious beliefs either directly or by imposing burdensome conditions on these beliefs.

There is a balance that must be struck between the two clauses. In protecting the free exercise of one religion, it is easy for the government to seem to be favoring (establishing) that religion. For example, if it makes an exception and says that people whose religious beliefs prohibit violence do not have to be soldiers, people with other beliefs might think the government is treating the first religion more favorably.

As with other First Amendment freedoms, the Constitution’s protection of religious beliefs must be balanced against the important needs of society as a whole. That means that the importance of a religious activity to a particular religion must be balanced against the harm to society that the activity can cause. For instance, although public dancing with poisonous snakes may be important to a religious group, the danger that such an activity poses to the public could allow the state to prevent it without running afoul of the free exercise clause.

The Court's Decision

In comparing the language of the Minnesota Constitution with the language of the First Amendment to the U.S. Constitution which says "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise of ...," the Court said "This language [the Minnesota Constitution] is of a distinctively stronger character than the federal counterpart." Accordingly, government actions that may not constitute an outright prohibition on religious practices (thus not violating the First Amendment) could nonetheless infringe on or interfere with those practices, violating the Minnesota Constitution. The state Bill of Rights expressly grants affirmative rights in the area of religious worship while the corresponding federal provision simply attempts to restrain governmental action."

The Minnesota Supreme Court, in interpreting the protections of the Minnesota Constitution, chose to use the standards that had been used by the U.S. Supreme Court prior to *Smith*: that the state must demonstrate (1) a compelling state interest in the goal of the law and (2) that there is no less restrictive alternative to the action required or prohibited by the law.

"Only the government's interest in peace or safety or against acts of licentiousness will excuse an imposition on religious freedom under the Minnesota Constitution. . . Rather than a blanket denial of a religious exemption whenever public safety is involved, only religious practices found to be inconsistent with public safety are denied an exemption. By juxtaposing individual rights of conscience with the interest of the state in public safety, this provision invites the court to balance competing values in a manner that the compelling state interest test . . . articulates: once a claimant has demonstrated a sincere religious belief intended to be protected by Section 16, the state should be required to demonstrate that public safety cannot be achieved by proposed alternative means."

The Court ruled that the state failed to demonstrate that the alternative signs did not protect public safety, and therefore the application of the Minnesota law to the Amish defendants violated their freedom of conscience rights protected by the Minnesota Constitution.

DISCUSSION QUESTIONS

State v. Hershberger, 462 N.W.2d 393 (Minn.1990)

1. Should the sincerity of one's religious beliefs be examined by the court? Must everyone practicing the religion hold the same beliefs? How would the court know if an individual was being sincere?
2. Does the government regulation burden the exercise of the religion? In what way?
3. Is the government regulation justified? Is the state's concern for safety of the public using the highways a legitimate state interest? Is there a less restrictive way of accomplishing the goal of public safety? Should the constitutional protection require that the government use the least restrictive alternative?

MOOT COURT ACTIVITY

INTRODUCTION

In some cases, individuals who have taken their dispute to court do not agree with the decision of the court. They might feel that the court erred in ruling on the admission of evidence or in the application of the law. They might feel that the evidence presented did not support the decision. For whatever reason, people often consider appealing their case to a higher court. When legal grounds for the appeal exists, such as the reasons presented above, an appeal might be wise. In other cases, where there is no legal basis, appeals are a waste of time and money. Lawyers help their clients decide if an appeal is warranted.

Cases are appealed to *appellate courts*. In Minnesota, most cases are appealed to the Minnesota Court of Appeals. A limited number of cases are appealed directly to the Minnesota Supreme Court. Cases on appeal are different than trials. The judges on the court listen to arguments presented by the lawyers representing the parties in the case. There are no witnesses. There is no jury. Instead, the judges review what happened at the trial, listen to the arguments of the lawyers (presented during an oral argument and/or in a written brief), and decide the case.

Students learn about the appeal process through moot court simulations. By developing and presenting an argument to the judges, students develop an understanding of appellate procedure as well as constitutional issues argued. The format is adaptable to any trial court decision that has grounds for appeal or as a reenactment of Supreme Court decisions. Students can research prior case law as precedent for the issue before the court or simply apply their understanding of the law to the case. However the simulation is used, students will have the opportunity to prepare and present arguments that support their side of the case before judges on an appellate court.

MOOT COURT PROCEDURE

1. Begin the class session by asking, “Who decides if a trial has been fair?” “Who has the last word in deciding what the Constitution means?” “What is meant by a court of last resort?” “What is a higher court?”
2. Explain background on appellate procedure:
 - a. A case begins in a trial or district court. It is here where witnesses testify, lawyers ask questions, and judges or juries make decisions.
 - b. A trial court is said to have *original jurisdiction* because it hears a case for the first time.
 - c. If a person who loses a case in a trial court wishes to appeal a decision, he or she would take the case to a court with *appellate jurisdiction*.
 - d. There are no jury trials in appellate courts. Rather, they are *courts of review*, which determine whether or not the rulings and judgment of the lower court are correct.
 - e. The party who brings the suit to the reviewing court is referred to as the *petitioner* or *appellant*. The petitioner argues that the lower court erred in its judgment and seeks a *reversal* of the lower court’s decision. The party who won at the lower court must now argue against the setting aside of the judgment. This party, the

respondent or *appellee*, wants the appellate court to *affirm* or agree with the lower court's decision.

- f. The first step in the appellate process, after the filing of a *Notice of Appeal*, is the submission of *briefs* by each party. Each brief identifies the facts of the case, the issues of fact and law, how the trial court ruled, and legal arguments using case law that will persuade the appellate court to affirm or reverse the lower court.
 - g. After the briefs are completed, *oral arguments* might be scheduled to answer questions the judges might have. Unlike trial court procedure where many witnesses testify in court, oral arguments are only presented by attorneys. Each lawyer is given a limited amount of time (usually 30 minutes) to present their argument before a panel of judges. The petitioner argues first because their client has brought the appeal to the higher court. Respondent's argument will immediately follow. Before petitioner begins, he or she may reserve time for a rebuttal following the respondent's argument. Judges frequently interrupt the attorneys to ask clarifying questions.
 - h. Following the oral argument, judges meet together and discuss the merits of the case. Judges will vote, and the majority viewpoint becomes the judgment. A judge for the majority will write the *majority opinion*. Those judges who disagree with the majority may write a *dissenting opinion*.
3. Select a case for the moot court. (A case on religious freedom including discussion of law for students and notes for teachers is provided.) Review the background and facts of the case. Identify which parties are the petitioner and respondent. Determine each side's position before the appellate court. Clarify the issues in the case by listing arguments for each side. Do **not** provide the Court's decision in the case until after the students have completed their moot court.
 4. Divide the class into attorney teams of four to six students and assign to each team the position of petitioner or respondent. They will prepare arguments to support their positions and present these to a court of several (up to nine) justices. Each side is allowed four minutes for its presentation. **(SEE INSTRUCTIONS FOR ATTORNEYS)**
 5. For each case, an uneven number of justices should be selected including a chief justice. The group of justices can change for each case or can serve as the court for all appellate arguments. They will listen to the attorney arguments and interrupt to ask questions. After oral arguments, the chief justice will lead a five-minute conference in which justices present their views of the case. Each justice will try to persuade the others to agree with his or her interpretation of the case. At the end of the conference, the justices take a final vote. The chief justice may assign a justice to present the decision of the court to the class. **(SEE INSTRUCTIONS FOR JUSTICES)**
 6. Remaining students might serve as law clerks in helping justices understand the case. (In Minnesota, judges on the Court of Appeals and the Supreme Court each have law clerks that help research the law and develop the opinions.) Assign each clerk to a particular justice. They will meet together during preparation time and discuss the case.

(SEE INSTRUCTIONS FOR LAW CLERKS.) As an alternative, select second attorney teams to present additional arguments.

7. Depending on the purpose of the activity, preparation time will vary. A complex case requiring additional research may be an outside assignment. A simpler “self-contained” case need only take fifteen minutes of preparation time as students work together.
8. Conduct the Moot Court Activity.
 - a. **Room Set-Up.** Justices should be seated together in a row facing the class. Attorneys can present their arguments by standing in front of the court or seated as a group.
 - b. **Oral Argument.** (15 minutes) Have one student announce that court is in session and have students rise as the justices enter the room. The chief justice will open court by announcing the name of the case. He or she will then ask the petitioner’s attorneys to begin their four-minute argument. At any time, the justices may ask questions. Attorney teams should answer questions before continuing the argument. Respondent’s attorney will follow. (You may adapt format by allowing a rebuttal by petitioner. This offers student attorneys a second chance to make their argument after they become comfortable with the format.) After oral arguments, the chief justice adjourns the court.
 - c. **Follow-Up Conference** (5 minutes) Justice conferences are done in private. However, for this activity a “**fishbowl conference**” will allow the class to observe the discussion. Justices sit in a circle in the middle of the room with the rest of the class forming an outer circle where they can easily hear and see the discussion. The chief justice will ask each justice for his or her view of the case. He or she will then facilitate an open discussion before calling for a final vote.
9. Debrief the Moot Court activity. Encourage all students to participate in the discussion. Questions that facilitate discussion include:
 - a. Do you agree or disagree with the decision of the court? Compare the class’s decision with the actual case.
 - b. What attorney arguments were most convincing to you? Why?
 - c. Were the questions asked by the justices helpful to the process?
 - d. What do justices consider in deciding how to vote on a case?
 - e. Did you change your mind about the case after listening to the attorney arguments? After the Judge’s conference?
 - f. Why are appellate courts important in our judicial system?

INSTRUCTIONS FOR ATTORNEY TEAMS

Organize your argument in outline form including the following information:

1. A clear, brief statement of your position and at least two arguments or reasons why the court should adopt your position.
 - a. ***If you represent the petitioner your position is that the lower court made a wrong decision.*** Why? Your argument may focus on whether or not a law is constitutional, trial procedure was fair, or actions by government officials were proper.
 - b. ***If you are representing the respondent your position is that the lower court made the right decision.*** Why? Defend the lower court's position as well as counter the charges made by the other side.
2. Facts from the case that support each argument with an explanation of how each fact supports it.
3. Explanations of any Supreme Court decisions that support your arguments.
4. Request for action (uphold trial court or reverse trial court)

Use this outline in your four-minute presentation. Decide which team member(s) will present the information.

Finally, assign at least one team member to answer the justice's questions. He or she should prepare by carefully reviewing the case materials.

Oral Argument:

Begin your argument by saying:

*"May it please the court, my name is _____ and I represent
_____ in this case."*

Then continue with your argument. Be prepared to stop when a justice asks a question. The attorney team member assigned to questions should answer. Continue presenting your case until the next question is asked. Try to conclude your argument by restating the action you would like the court to take. Remember that your time may be taken up with answering questions.

INSTRUCTIONS FOR JUSTICES

To prepare for oral arguments, justices should meet with their assigned clerk and review the case. What is unclear to you? What facts do you want clarified? Does a position need more explanation? Together develop questions to be asked by justices during oral arguments. Remember justices can interrupt attorney presentations to ask questions.

Justices and clerks can also review previous court decisions that relate to the issue presented in the case. The court tries to follow previous decisions in order to promote consistency and stability in the legal system. Should the court follow its earlier decisions (*precedent*) or should the court abandon precedent and create new rules? As a justice, you must decide this case.

ROLE OF CHIEF JUSTICE

During the Moot Court Hearing you may:

1. Extend the time limits of an attorney's presentation if you or another judge feels it is necessary.
2. Maintain order in the courtroom by insisting that only one individual speak at any one time and that all statements by the attorneys be directed to the court and not to the attorneys representing the other side in the case.

At the follow-up conference:

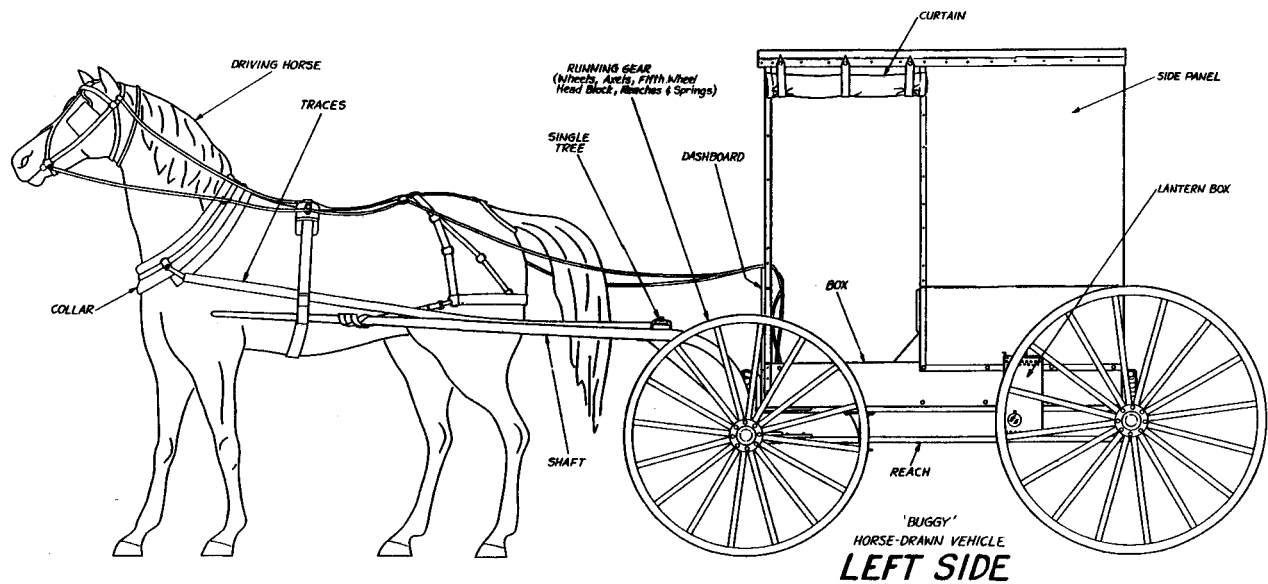
1. Insist that each judge be initially allowed to express his or her views regarding the case without any comments or questions from the other judges.
2. Provide the judges with the opportunity to question the positions of the other judges and convince them of the merits of their own views.
3. Take a formal poll of the judges and assign one judge to be in charge of presenting the court's majority opinion. If a dissenting opinion exists, provide dissenting judges an opportunity to present their opinions.

INSTRUCTIONS FOR LAW CLERKS

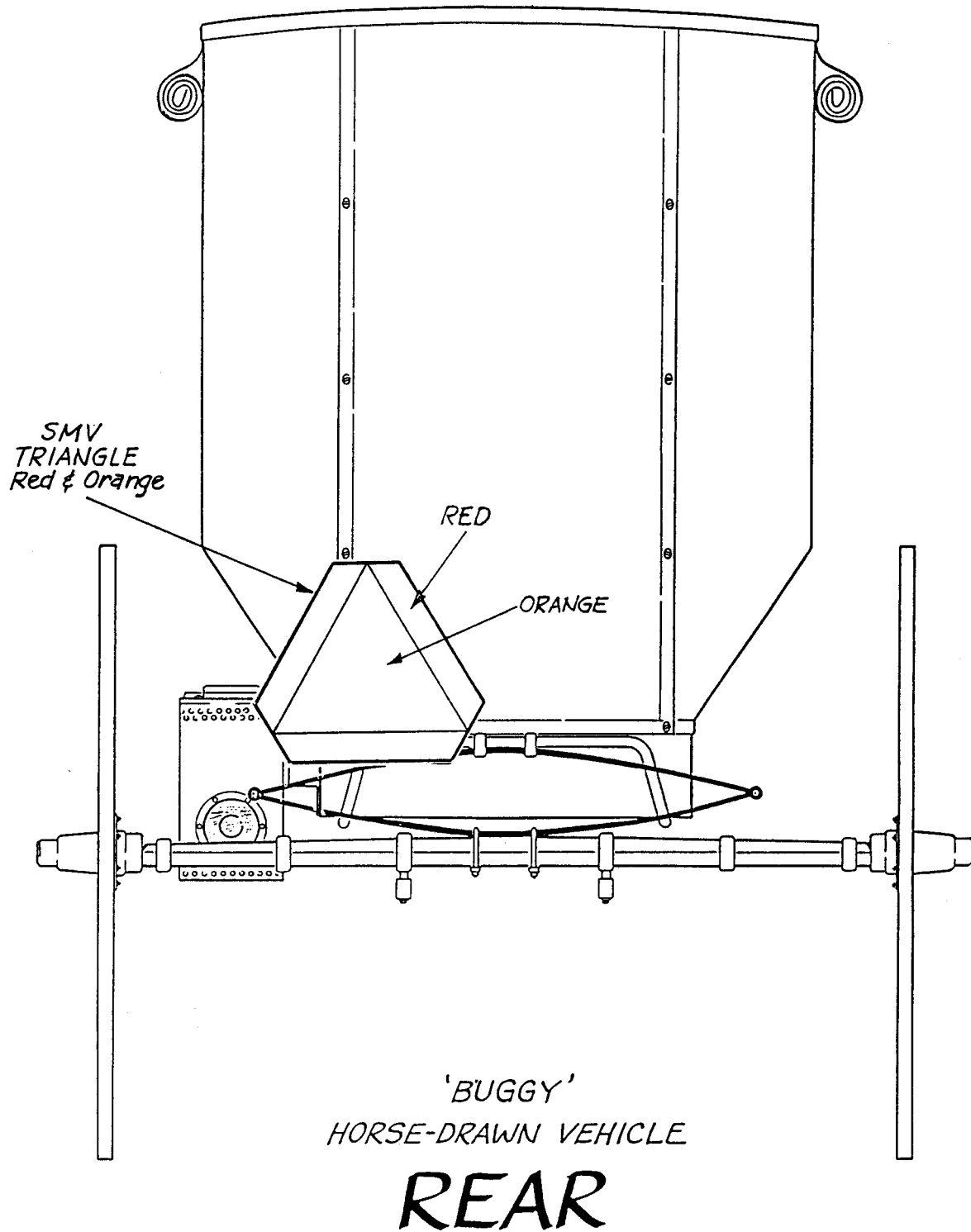
Law clerks are responsible for such tasks as reading all the appeals filed with the court, writing memos summarizing the key issues in each case, and helping prepare court opinions by doing research and writing drafts.

In this activity, law clerks should read carefully all documents about the case and any relevant Supreme Court decisions. You will discuss the case with your assigned justice and help him or her prepare questions to be asked during oral arguments.

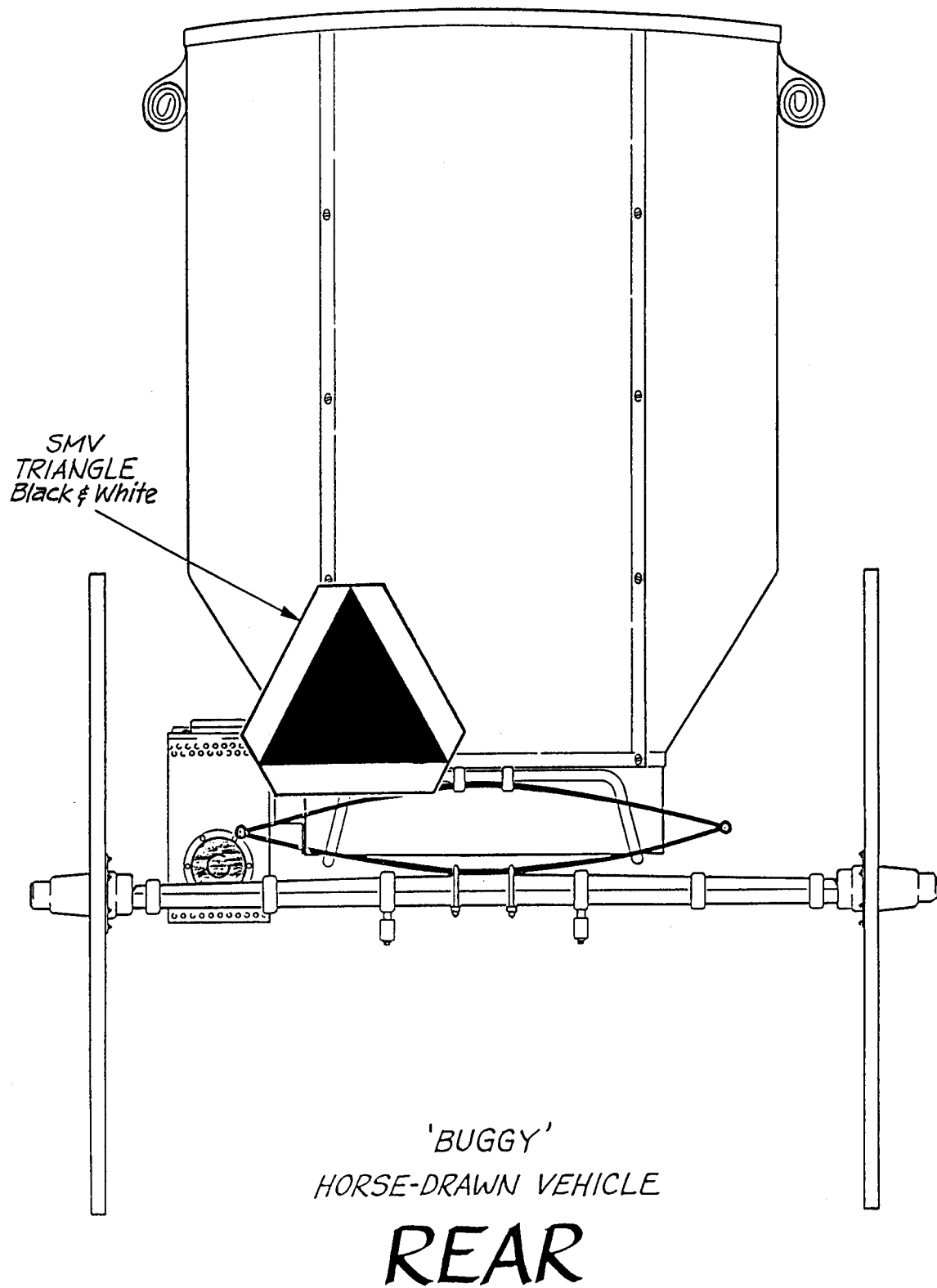
DRAWINGS FROM CASE

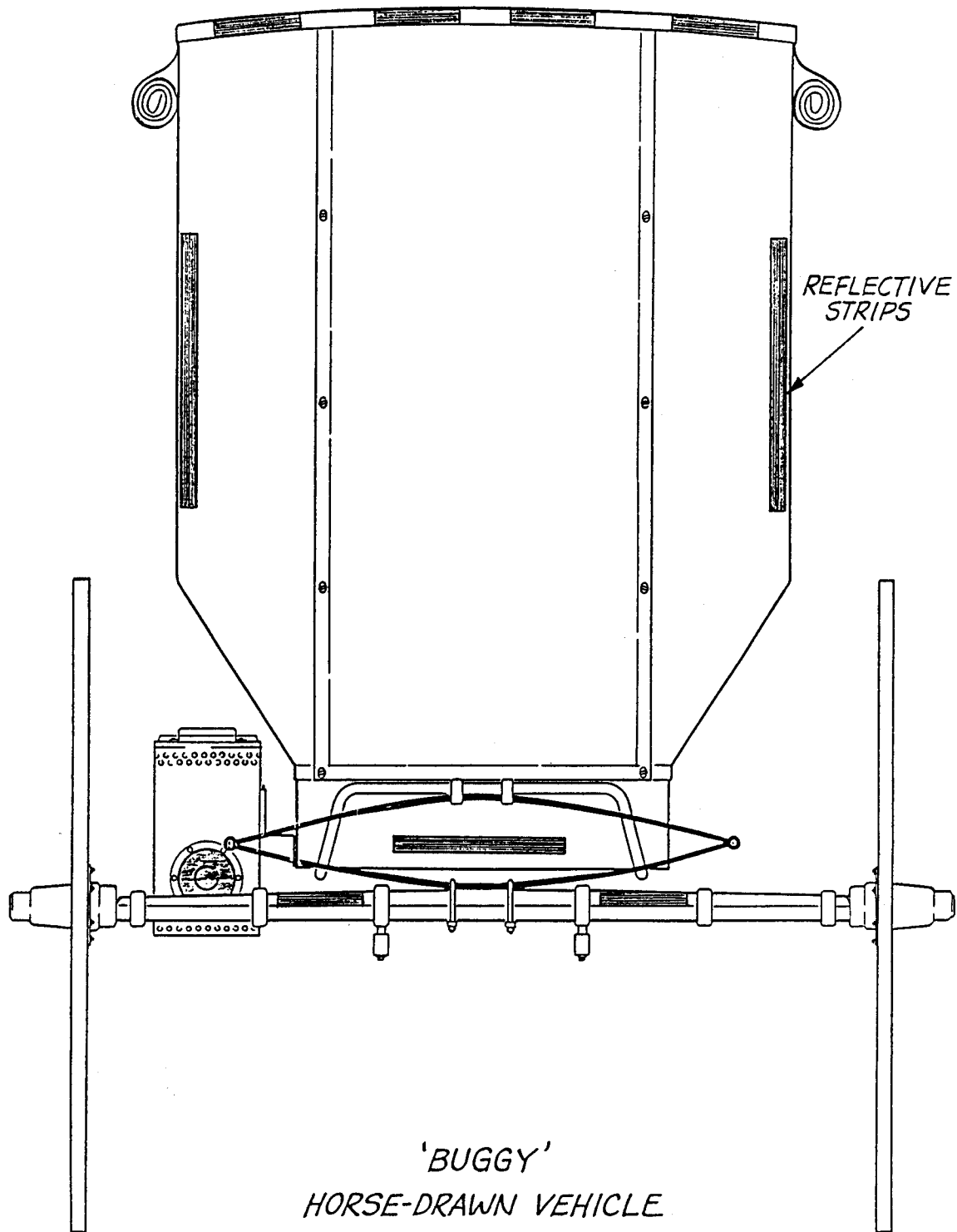


Exhibits from trial: *State of Minnesota v. Eli A. Hershberger*



Exhibits from trial: *State of Minnesota v. Eli A. Hershberger*





'BUGGY'
HORSE-DRAWN VEHICLE
REAR

Exhibits from trial: *State of Minnesota v. Eli A. Hershberger*

TEACHER NOTES FOR DISCUSSION QUESTIONS

1. Should the sincerity of one's religious beliefs be examined by the court? The Minnesota Supreme Court and the United States Supreme Court have held that it has never been a requirement to demonstrate that the sincerity of one's religious belief is uniformly agreed to by the religious community of which the individual is a member. Instead, the focus is to be on whether the individual claiming First Amendment protection has a sincere religious belief. (The willingness to go to jail probably demonstrates sincere religious belief.)
2. Does the government regulation burden the exercise of the religion? When a statute imposes criminal sanctions including fines and jail time on those who do not obey, it is a substantial burden. In this case, the Amish face a choice of either following their religious beliefs by refusing to adopt "worldly symbols" bearing "loud colors" and suffering the consequent criminal sanctions, or rejecting those beliefs in order to obey the law.
3. Is the government regulation justified? This is the critical issue. Under current United States Supreme Court decisions interpreting the United States Constitution, the government need only show a good reason for the regulation for it to be found constitutional. Under current decisions by the Minnesota Supreme Court interpreting the Minnesota Constitution, the government is required to have a compelling governmental interest, which cannot be served by a less intrusive alternative. The Minnesota Constitution offers individuals more religious protection. In a decision by the Minnesota Supreme Court regarding the Amish case presented here, the Court ruled that the Minnesota law violates the Amish's right under the Minnesota Constitution to freely practice their religion.

Portions of this lesson were taken from Fairness and Freedom: Courts as a Forum for Justice, Minnesota Center for Community Legal Education. Permission granted to reprint for educational use.

LEARNING MORE: The Minnesota Supreme Court upholds rights

State courts must follow the United States Supreme Court in matters of federal constitutional law. However, they are free to interpret their own law to provide greater protection for individual rights than what is required by the U.S. Constitution.

In the video “Inside Straight: The Third Branch,” the case of *Minnesota v. Hershberger* is discussed as a time when the Minnesota Supreme Court found that the Minnesota Constitution in Article 1, Sec. 16 offered greater protection of religious beliefs than those provided by the First Amendment's free exercise clause in the U.S. Constitution. In *Hershberger*, Minnesota's slow-moving sign law as it applied to the Amish was a violation of their religious beliefs.

Have there been other cases when our state constitution has been interpreted to offer us greater protection of our individual rights? Below is a discussion of three such cases.

***Ascher v. Commissioner of Public Safety*, 519 N.W.2d 183 (Minn. 1994).**

This case arises from a roadblock conducted by police, which stopped all cars at a certain intersection, to investigate further the possibility of drivers being intoxicated. During the four-hour sobriety checkpoint, 975 vehicles were delayed an average of two minutes and 14 DWI (Driving While Intoxicated) arrests took place which is 1.4% of the total stops. One of the arrested drivers, Ricky Ascher, argued that the road block violated his constitutional right to be protected from an unreasonable search or seizure guaranteed in the Minnesota Constitution, Art.1, Sec.10.

The language of Art. 1, Sec. 10 is identical to Ascher's Fourth Amendment rights in the U.S. Constitution, "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized." But in 1990, the U.S. Supreme Court held that temporary roadblocks did not violate the Fourth Amendment because the state's interest in stopping drunk driving was greater than the minimal intrusion to drivers by such short stops. *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990). Ascher asked the Minnesota Supreme Court to use its independent authority to interpret the very same provision in the Minnesota Constitution as offering greater protection of Ascher's individual right to be secure from unreasonable seizures.

The Minnesota Supreme Court agreed with Ascher and found the temporary roadblocks did violate the Minnesota Constitution, Art. 1, Sec. 10. The Court said it has long required police to have an objective individualized articulable suspicion of criminal wrongdoing before subjecting a driver to an investigative stop. The state of Minnesota failed to persuade the Minnesota Supreme Court that there was enough reason to depart from the requirement of individualized suspicion and subject drivers to the intrusion of a sobriety checkpoint. Even though the U.S. Supreme Court had been so persuaded, the Minnesota Supreme Court did not follow and found

independent grounds to rule the roadblocks a violation of the rights of Minnesota citizens.

***Friedman v. Commissioner of Public Safety*, 473 N.W.2d 828 (Minn. 1991)**

This case asked the Minnesota Supreme Court to interpret when an accused person has the right to be represented by counsel. Minnesota Constitution, Art. 1, Sec.6 states, "the accused shall enjoy the right to a speedy and public trial by an impartial jury . . . and the assistance of counsel in his defense."

The circumstance involved a driver who had been stopped and arrested after failing a preliminary breath test. At the police station the driver had to wait for an intoxilyzer test and during that wait had asked to speak with her attorney. She was not allowed to do so. She was then informed that refusal to take the intoxilyzer test would result in suspension of her license for one year. Her response was interpreted as a refusal and her license was suspended for one year. She challenged the license suspension arguing that she should have been able to consult with an attorney prior to deciding whether to take the intoxilyzer test. The court was asked to decide at what point during a DWI proceeding does the right to an attorney begin.

The Court was again faced with language in the state constitution that is identical to language in the sixth amendment of the U.S. Constitution. But will the same words be interpreted in the same way? It was noted by the Minnesota Supreme Court that a number of states have interpreted their own constitutions to grant a more expansive right to counsel to those accused of crimes than the right afforded by the sixth amendment of the federal Constitution.

The Minnesota Supreme Court concluded after reviewing Minnesota's lengthy and historic recognition of human rights, human dignity, and the procedural protection for rights of the criminally accused, that the detention of drivers suspected of driving while under the influence is a criminal proceeding invoking the right to counsel. Therefore the point at which an individual is asked by law enforcement officials to undergo a blood alcohol test is a critical stage in the criminal process and that Article I, Section 6 of the Minnesota Constitution guarantees an individual in such a situation the limited right to counsel within a reasonable time before submitting to testing.

***Elli Lake v. Wal-Mart Stores*, [C7-97-263](#), ____ N.W.2d ____ (Minn.1998)**

In this case, the Minnesota Supreme Court found a new right for Minnesota citizens. The basis for the right is not found in the Minnesota Constitution but rather in "common law," a term that refers to the body of law evolving over time from judicial precedent rather than legislative enactment. The Court finds a right to privacy in Minnesota for causes of action in tort for intrusion upon seclusion, appropriation, and publication of private facts. The tort of false light publicity is not included in the right to privacy.

The facts of the case will explain these rights more clearly. During a vacation in Mexico two

young women had their photograph taken while they were naked in the shower together. Upon their return home they brought five rolls of film to their local Wal-Mart store and photo lab. When they received their developed photographs along with the negatives, an enclosed written notice stated that one or more of the photographs had not been printed because of its "nature."

Several months later an acquaintance of the women alluded to the photograph and questioned their sexual orientation. They were told later that a Wal-Mart employee had shown them a copy of the photograph. Nearly a year later, they realized that one or more copies of the photograph were circulating in the community.

The women filed suit against Wal-Mart and an unidentified employee alleging the four traditional invasion of privacy torts - intrusion upon seclusion, appropriation, publication of private facts, and false light publicity. Because Minnesota law had never adopted these rights the district court dismissed the case. After the Minnesota Court of Appeals affirmed the district court's dismissal, the case was then appealed to the Minnesota Supreme Court.

The Minnesota Supreme Court decided that three parts of the common law tort known as "invasion of privacy" would be adopted. The Court accepted: 1. intrusion upon seclusion which occurs when one "intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns. . .if the intrusion would be highly offensive to a reasonable person," 2. appropriation which protects an individual's identity and is committed when one "appropriates to his own use or benefit the name or likeness of another," and 3. publication of private facts which occurs when one "gives publicity to a matter concerning the private life of another. . . if the matter publicized is of kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public."

Prior to this case, Minnesota had been one of only three states not yet recognizing any of the four privacy torts. The Court in joining the other states described the right to privacy as an integral part of our humanity; one has a public persona, exposed and active, and a private persona, guarded and preserved. The heart of our liberty is choosing which parts of our lives shall become public and which parts we shall hold close. The girls in this case have alleged a type of privacy interest worthy of protection.

THE SLAUGHTERHOUSE CASE: APPLICATION OF THE MINNESOTA CONSTITUTION TO A CASE STUDY

This activity will help students understand the basis for the protection of religious freedom and the Minnesota Supreme Court's analysis in religion cases and will apply this analysis to a recent problem facing a Minnesota community when religious rights and city interests collide.

PROCEDURE

1. Ask students to review the *Minnesota v. Hershberger* case. What were the facts? Issue? Result? How did this case expand individual protection of religious practice under the Minnesota Constitution, Article 1, Section 16?
2. Have students read the CASE SUMMARY: The Slaughterhouse Case and complete the Guide for Analysis. The dilemma described is a real case adapted from newspaper articles. Divide the students into three groups. One group prepares the arguments to be made by Lee in asserting that his religious rights have been infringed upon by the city of Hugo. The second group would prepare arguments defending the city's actions as non-discriminatory but necessary in promoting public safety and health. The third group will act as judges and decide the case. Students will work together to strengthen their case but will present in different groups. The last group's preparation would be an understanding of the *Hershberger* case, a closer look at the Minnesota Constitution and the Court's test (outlined in the case summary), which they will need to apply to this particular case.
3. Re-divide the groups into new groups of three: one Lee lawyer, one city attorney and a judge. The judge will ask Lee to present his case first and then follow with the city's arguments. The judge may want to ask questions as the lawyers discuss their case. The judge will want to decide the case telling the reasons for their decision.
4. Share group results with the class. What were important factors taken into consideration by the judges? What other solutions might resolve the conflict? How can the city of Hugo accommodate the religious beliefs of Lee and still have a safe and healthy community?

CASE SUMMARY: The Slaughterhouse Case

Seng Lee operates a slaughterhouse on a 20-acre farm in Hugo, Minnesota that serves the needs of many Asian and African immigrants who practice traditional animal sacrifice as a part of their religious ceremonies. Tong Vang Xiong, a Hmong shaman (a spiritual leader in the Hmong community), slaughters a pig at Lee's slaughterhouse as a part of a necessary ritual for a pregnant woman. Such a sacrifice ensures that the baby has a safe passage through the birth canal and that its soul will have a safe journey to earth. Another family on Lee's property lights a fire outside to boil blood from a cow that had been slaughtered in order to pay back a blessing. Pao Yang is at the slaughterhouse waiting for a cow to be sacrificed because his grandfather died and a cow is needed to accompany him to the other side. Ever since Lee bought the farm and business last year, it has become an important place for people to practice their religion.

The city of Hugo sees the slaughterhouse from a different point of view. The city claims that Lee's farm violates a city-zoning ordinance and has taken Lee to court. The lawsuit says Lee is illegally operating a custom slaughterhouse in an agricultural zone. The city also believes the slaughterhouse is a nuisance to those property owners nearby. Nuisance is when someone uses their own property in such a way that it interferes with their neighbors' use and enjoyment of their own property. Neighbors who live along the rural road are concerned about traffic on weekends where an estimated 200 carloads of people come to Lee's property each Saturday. Complaints have also been made about improper disposal of manure and carcasses, the runoff of bloody water, the sounds of dying animals and the smell of burning hair. The slaughterhouse had been in operation since 1992 but ever since Lee bought it last year, business has increased dramatically. City officials say the reason for the lawsuit is because of land use and not because of the Hmong culture.

Lee disagrees. He is counter suing claiming that the city's actions are based on religious discrimination. "I sacrificed everything to do this," Lee said. "Now they are telling me I can't do it. At first I thought it was zoning, then they said it was a nuisance. Now, I understand. It's different. We're different. The city of Hugo is mostly white and here are these Asians and Africans. People are afraid that the value of their property will go down."

The Minnesota Supreme Court has adopted a 4-part test to review a person's claim that their religious rights have been infringed on or interfered with by government action. The Court will ask:

1. Is the objector's belief sincerely held?
2. Does the state regulation burden the exercise of religious beliefs?
3. Is the state interest in the regulation overriding or compelling? (Only state interests in peace or safety or against acts of licentiousness, loose and lawless behavior, will be considered) and
4. Is the state regulation the least restrictive means for advancing its compelling interest? In other words, if there is any other way to regulate that would be less burdensome to religious rights then the state should use it.

GUIDE FOR ANALYSIS

1. How would Lee's attorneys answer each of the above questions? Convince the court that Lee's religious rights have been infringed.
2. What arguments would Hugo's city attorney use in response?
3. How should the court decide?

RESOURCES

Minnesota v. Hershberger, 462 N.W.2d 393 (Minn. 1990)

Hill-Murray Fed'n of Teachers v. Hill-Murray High School, 487 N.W.2d 857 (Minn. 1992)

Minneapolis Star Tribune www.startribune.com

1. Slaughterhouse dispute//The controversy in Hugo pits the food and religious needs of immigrants against city zoning ordinances and state regulations, 03-19-2000, pp 01B.
2. Slaughterhouse that caters to Asians, Muslims ordered to close, 05-07-2000, pp. 01B.
3. Hugo will vote on zoning for slaughterhouses, 06-03-2000, pp. 04B.
4. Hugo prohibits custom animal slaughter//The vote will officially close a Hmong Slaughterhouse, where animals were sacrificed for religious reasons, 06-06-2000, pp 01B.
5. Hugo vote leaves slaughterhouses in limbo//Fate hinges on when businesses were established, 06-07-2000, pp 01B

Fairness and Freedom: Courts as a Forum for Justice, the Minnesota Center for Community Legal Education, www.ccle.fourh.umn.edu/Fairness.html